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HOUSE BILL 316

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; RECONCILING MULTIPLE AMENDMENTS TO SECTION 66-8-102 NMSA 1978 (BEING LAWS 1953, CHAPTER 139, SECTION 54, AS AMENDED BY LAWS 2003, CHAPTER 51, SECTION 10 AND BY LAWS 2003, CHAPTER 90, SECTION 3 AND ALSO BY LAWS 2003, CHAPTER 164, SECTION 10); EXPANDING THE ELEMENTS OF THE OFFENSE OF AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 2003, Chapter 51, Section 10 and by Laws 2003, Chapter 90, Section 3 and also by Laws 2003, Chapter 164, Section 10) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING

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1 LIQUOR OR DRUGS-- AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE
2 OF INTOXICATING LIQUOR OR DRUGS-- PENALTY. --

3 A. It is unlawful for a person who is under the
4 influence of intoxicating liquor to drive a vehicle within this
5 state.

6 B. It is unlawful for a person who is under the
7 influence of any drug to a degree that renders him incapable of
8 safely driving a vehicle to drive a vehicle within this state.

9 C. It is unlawful for:

10 (1) a person who has an alcohol concentration
11 of eight one hundredths or more in his blood or breath to drive
12 a vehicle within this state; or

13 (2) a person who has an alcohol concentration
14 of four one hundredths or more in his blood or breath to drive
15 a commercial motor vehicle within this state.

16 D. Aggravated driving while under the influence of
17 intoxicating liquor or drugs consists of a person who:

18 (1) has an alcohol concentration of sixteen
19 one hundredths or more in his blood or breath while driving a
20 vehicle within this state;

21 (2) has caused bodily injury to a human being
22 as a result of the unlawful operation of a motor vehicle while
23 driving under the influence of intoxicating liquor or drugs;

24 [~~or~~]

25 (3) refused to submit to chemical testing, as

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1 provided for in the Implied Consent Act, and in the judgment of
2 the court, based upon evidence of intoxication presented to the
3 court, was under the influence of intoxicating liquor or drugs;
4 or

5 (4) while under the influence of intoxicating
6 liquor or any drug to a degree that renders the person
7 incapable of safely driving a vehicle, drives a vehicle within
8 this state with one or more passengers who are less than
9 eighteen years of age.

10 E. A person under first conviction pursuant to this
11 section shall be punished, notwithstanding the provisions of
12 Section 31-18-13 NMSA 1978, by imprisonment for not more than
13 ninety days or by a fine of not more than five hundred dollars
14 (\$500), or both; provided that if the sentence is suspended in
15 whole or in part or deferred, the period of probation may
16 extend beyond ninety days but shall not exceed one year. Upon
17 a first conviction pursuant to this section, an offender may be
18 sentenced to not less than forty-eight hours of community
19 service or a fine of three hundred dollars (\$300). The
20 offender shall be ordered by the court to participate in and
21 complete a screening program described in Subsection [H] K of
22 this section and to attend a driver rehabilitation program for
23 alcohol or drugs, also known as a "DWI school", approved by the
24 bureau and also may be required to participate in other
25 rehabilitative services as the court shall determine to be

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1 necessary. In addition to those penalties, when an offender
2 commits aggravated driving while under the influence of
3 intoxicating liquor or drugs, the offender shall be sentenced
4 to not less than forty-eight consecutive hours in jail. If an
5 offender fails to complete, within a time specified by the
6 court, any community service, screening program, treatment
7 program or DWI school ordered by the court, the offender shall
8 be sentenced to not less than an additional forty-eight
9 consecutive hours in jail. Any jail sentence imposed pursuant
10 to this subsection for failure to complete, within a time
11 specified by the court, any community service, screening
12 program, treatment program or DWI school ordered by the court
13 or for aggravated driving while under the influence of
14 intoxicating liquor or drugs shall not be suspended, deferred
15 or taken under advisement. On a first conviction pursuant to
16 this section, any time spent in jail for the offense prior to
17 the conviction for that offense shall be credited to any term
18 of imprisonment fixed by the court. A deferred sentence
19 pursuant to this subsection shall be considered a first
20 conviction for the purpose of determining subsequent
21 convictions.

22 F. A second or third conviction pursuant to this
23 section shall be punished, notwithstanding the provisions of
24 Section 31-18-13 NMSA 1978, by imprisonment for not more than
25 three hundred sixty-four days or by a fine of not more than one

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1 thousand dollars (\$1,000), or both; provided that if the
2 sentence is suspended in whole or in part, the period of
3 probation may extend beyond one year but shall not exceed five
4 years. Notwithstanding any provision of law to the contrary
5 for suspension or deferment of execution of a sentence:

6 (1) upon a second conviction, an offender
7 shall be sentenced to a jail term of not less than [~~seventy-~~
8 ~~two~~] ninety-six consecutive hours, forty-eight hours of
9 community service and a fine of five hundred dollars (\$500).

10 In addition to those penalties, when an offender commits
11 aggravated driving while under the influence of intoxicating
12 liquor or drugs, the offender shall be sentenced to a jail term
13 of not less than ninety-six consecutive hours. If an offender
14 fails to complete, within a time specified by the court, any
15 community service, screening program or treatment program
16 ordered by the court, the offender shall be sentenced to not
17 less than an additional seven consecutive days in jail. A
18 penalty imposed pursuant to this paragraph shall not be
19 suspended or deferred or taken under advisement; and

20 (2) upon a third conviction, an offender shall
21 be sentenced to a jail term of not less than thirty consecutive
22 days and a fine of seven hundred fifty dollars (\$750). In
23 addition to those penalties, when an offender commits
24 aggravated driving while under the influence of intoxicating
25 liquor or drugs, the offender shall be sentenced to a jail term

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1 of not less than sixty consecutive days. If an offender fails
2 to complete, within a time specified by the court, any
3 screening program or treatment program ordered by the court,
4 the offender shall be sentenced to not less than an additional
5 sixty consecutive days in jail. A penalty imposed pursuant to
6 this paragraph shall not be suspended or deferred or taken
7 under advisement.

8 G. Upon a fourth [~~or subsequent~~] conviction
9 pursuant to this section, an offender is guilty of a fourth
10 degree felony [~~as provided in Section 31-18-15 NMSA 1978, and~~
11 ~~shall be sentenced to a jail term of not less than six months,~~
12 ~~which shall not be suspended or deferred or taken under~~
13 ~~advisement]~~ and, notwithstanding the provisions of Section
14 31-18-15 NMSA 1978, shall be sentenced to a term of
15 imprisonment of eighteen months, six months of which shall not
16 be suspended, deferred or taken under advisement.

17 H. Upon a fifth conviction pursuant to this
18 section, an offender is guilty of a fourth degree felony and,
19 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
20 shall be sentenced to a term of imprisonment of two years, one
21 year of which shall not be suspended, deferred or taken under
22 advisement.

23 I. Upon a sixth conviction pursuant to this
24 section, an offender is guilty of a third degree felony and,
25 notwithstanding the provisions of Section 31-18-15 NMSA 1978,

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1 shall be sentenced to a term of imprisonment of thirty months,
2 eighteen months of which shall not be suspended, deferred or
3 taken under advisement.

4 J. Upon a seventh or subsequent conviction pursuant
5 to this section, an offender is guilty of a third degree felony
6 and, notwithstanding the provisions of Section 31-18-15 NMSA
7 1978, shall be sentenced to a term of imprisonment of three
8 years, two years of which shall not be suspended, deferred or
9 taken under advisement.

10 [~~H.-~~] K. Upon any conviction pursuant to this
11 section, an offender shall be required to participate in and
12 complete, within a time specified by the court, an alcohol or
13 drug abuse screening program approved by the department of
14 finance and administration and, if necessary, a treatment
15 program approved by the court. The requirement imposed
16 pursuant to this subsection shall not be suspended, deferred or
17 taken under advisement.

18 L. Upon a second or third conviction pursuant to
19 this section, an offender shall be required to participate in
20 and complete, within a time specified by the court, not less
21 than a twenty-eight day inpatient, residential or in-custody
22 substance abuse treatment program approved by the court, not
23 less than a ninety-day outpatient treatment program approved by
24 the court or a drug court program approved by the court. The
25 requirement imposed pursuant to this subsection shall not be

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1 suspended, deferred or taken under advisement.

2 M Upon a felony conviction pursuant to this
3 section, the corrections department shall provide substance
4 abuse counseling and treatment to the offender.

5 [~~I-~~] N. Upon a first conviction for aggravated
6 driving while under the influence of intoxicating liquor or
7 drugs pursuant to the provisions of Subsection D of this
8 section, as a condition of probation, an offender shall be
9 required to have an ignition interlock device installed and
10 operating for a period of one year on all motor vehicles driven
11 by the offender, pursuant to rules adopted by the bureau.
12 Unless determined by the sentencing court to be indigent, the
13 offender shall pay all costs associated with having an ignition
14 interlock device installed on the appropriate motor vehicles.
15 If an offender drives a motor vehicle that does not have an
16 ignition interlock device installed on the motor vehicle, the
17 offender may be in violation of the terms and conditions of his
18 probation.

19 [~~J-~~] O. Upon a first conviction for driving while
20 under the influence of intoxicating liquor or drugs pursuant to
21 the provisions of Subsection A, B or C of this section, as a
22 condition of probation, an offender may be required to have an
23 ignition interlock device installed and operating for a period
24 of one year on all motor vehicles driven by the offender,
25 pursuant to rules adopted by the bureau. Unless determined by

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1 the sentencing court to be indigent, the offender shall pay all
2 costs associated with having an ignition interlock device
3 installed on the appropriate motor vehicles. If an offender
4 drives a motor vehicle that does not have an ignition interlock
5 device installed on the motor vehicle, the offender may be in
6 violation of the terms and conditions of his probation.

7 [K-] P. Upon any subsequent conviction pursuant to
8 this section, as a condition of probation, a subsequent
9 offender shall be required to have an ignition interlock device
10 installed and operating for a period of at least one year on
11 all motor vehicles driven by the subsequent offender, pursuant
12 to rules adopted by the bureau. Unless determined by the
13 sentencing court to be indigent, the subsequent offender shall
14 pay all costs associated with having an ignition interlock
15 device installed on the appropriate motor vehicles. If a
16 subsequent offender drives a motor vehicle that does not have
17 an ignition interlock device installed on the motor vehicle,
18 the subsequent offender may be in violation of the terms and
19 conditions of his probation.

20 [L-] Q. In the case of a first, second or third
21 offense under this section, the magistrate court has concurrent
22 jurisdiction with district courts to try the offender.

23 [M-] R. A conviction pursuant to a municipal or
24 county ordinance in New Mexico or a law of any other
25 jurisdiction, territory or possession of the United States or

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1 of a tribe, [~~where~~] when that ordinance or law is equivalent to
2 New Mexico law for driving while under the influence of
3 intoxicating liquor or drugs, and prescribes penalties for
4 driving while under the influence of intoxicating liquor or
5 drugs, shall be deemed to be a conviction pursuant to this
6 section for purposes of determining whether a conviction is a
7 second or subsequent conviction.

8 [N-] S. In addition to any other fine or fee that
9 may be imposed pursuant to the conviction or other disposition
10 of the offense under this section, the court may order the
11 offender to pay the costs of any court-ordered screening and
12 treatment programs.

13 [0-] T. As used in this section:

14 (1) "bodily injury" means an injury to a
15 person that is not likely to cause death or great bodily harm
16 to the person, but does cause painful temporary disfigurement
17 or temporary loss or impairment of the functions of any member
18 or organ of the person's body; and

19 (2) "conviction" means an adjudication of
20 guilt and does not include imposition of a sentence."

21 Section 2. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.